

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARLIN M. ADAMS, Chapter 11 Trustee of the)
Post-Confirmation Bankruptcy Estates of)
CORAM HEALTHCARE CORPORATION) Case No. 04-1565-SLR
and CORAM, INC.,)
)
Plaintiff,)
)
v.)
)
DANIEL D. CROWLEY; DONALD J.)
AMARAL; WILLIAM J. CASEY; L. PETER)
SMITH; AND SANDRA L. SMOLEY,)
)
Defendants.)

**PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION TO VACATE ORDER AND LIFT STAY**

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Dated: March 9, 2006

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TABLE OF AUTHORITIES

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INTRODUCTION

Plaintiff, Arlin M. Adams, as Chapter 11 Trustee (“Trustee”) of the Post-Confirmation Bankruptcy Estates of Coram Healthcare Corporation and its wholly-owned subsidiary Coram, Inc. (collectively, “Coram”), submits this brief in support of his motion to vacate order and lift stay.

The Court’s Order of August 15, 2005 (D.I. 50) granting the parties’ request to stay this case was entered for the specific purpose of allowing the parties to engage in mediation. Despite the parties’ efforts, they have been unable to reach a settlement in whole or in part. Therefore, plaintiff requests that the Order be vacated and the stay lifted as soon as possible so that the case can proceed.

NATURE AND STAGE OF PROCEEDINGS

The Trustee filed this action on December 29, 2004, asserting that defendant Crowley, Coram’s former Chairman, President and CEO, and defendants Amaral, Casey, Smith and Smoley, Coram’s former Outside Directors, breached their fiduciary duties to Coram. Crowley answered the complaint on February 22, 2005. (D.I. 16). The Outside Directors filed a motion to dismiss under Rule 12(b)(6) on March 4, 2005. (D.I. 17). Crowley filed a motion for summary judgment on May 5, 2005. (D.I. 42).

On August 15, 2005, the Court entered an Order granting the parties’ request to stay this case pending mediation. (D.I. 50). On August 16, 2005, the Court denied the Outside Directors’ motion to dismiss and Crowley’s motion for summary judgment “without prejudice to renew should the parties not reach a settlement at the conclusion of mediation.” (D.I. 51).

SUMMARY OF ARGUMENT

The Court should vacate its Order of August 15, 2005, and lift the stay because the purpose for which the stay was entered -- to allow mediation -- is no longer applicable.

STATEMENT OF FACTS

At the request of Genesis Insurance Company, which had issued a Directors' and Officers' Liability Insurance Policy to Coram, the parties agreed to mediate this case and a declaratory judgment action started by Genesis in the District of Colorado on coverage issues. The parties jointly submitted a proposed stipulation and order staying the case pending mediation. (D.I. 50). The Court approved the stipulation and entered an order staying the case on August 15, 2005. (D.I. 50).

The parties participated in a two-day mediation in Washington, D.C., on December 5 and 6, 2005. Although the mediation failed to produce a settlement, the parties continued to converse and requested an extension of the stay. (D.I. 53). Those subsequent discussions have not resulted in a settlement.

ARGUMENT

The reasons supporting the Court's original grant of the stay on August 15, 2005 no longer apply. The Order was entered for the specific purpose of permitting the parties to participate in mediation, but those efforts have not succeeded.

The Trustee believes that further delay might prejudice his ability to prosecute Coram's claims. For example, delay always increases the likelihood that the ability of the defendants and witnesses to recall crucial facts will diminish. *See, e.g., Neomagic Corp. v.*

Trident Microsystems, Inc., No. 98-699-RRM, 2001 U.S. Dist. LEXIS 14585, *5-6 (D. Del. Sept. 7, 2001) (granting motion to lift stay because, among other reasons, movant would be “prejudiced by further delay due to likelihood that as more time goes by, the memories of witnesses will fade and valuable evidence may be lost.”). Therefore, the Trustee requests that the Court vacate its Order of August 15, 2005 and lift the stay currently in place. (D.I. 50).

CONCLUSION

For all the above reasons, the Trustee respectfully requests that the Court vacate its Order of August 15, 2005 and set a date and time for a pretrial scheduling conference.

Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

I, Rolin P. Bissell, hereby certify that on March 9, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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